

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Raymond L. Semler,

Petitioner,

v.

Civil No. 09-3648 (JNE/LIB)
ORDER

Cal Ludeman, Commissioner of the
Department of Human Services, and
Dennis Benson, CEO of the Minnesota
Sex Offender Program,

Respondents.

This case is before the Court on Petitioner's request for a certificate of appealability and Petitioner's application for leave to proceed on appeal in forma pauperis (IFP). Petitioner is currently in custody in the Minnesota Sex Offender Program in Moose Lake, Minnesota. He seeks to appeal the dismissal of his petition for a writ of habeas corpus under 28 U.S.C. § 2254 (2006).

On August 18, 2010, the magistrate judge recommended that Petitioner's petition be dismissed. In an Order dated September 13, 2010, the Court adopted the Report and Recommendation and declined to issue a certificate of appealability. The Court denies Petitioner's renewed request for a certificate of appealability.

Rule 24(a)(3) of the Federal Rule of Appellate Procedure provides that "[a] party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court . . . certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis." Fed. R. App. P. 24(a)(3)-(3)(A).

The magistrate judge previously determined that Petitioner is financially eligible for IFP status. Therefore, unless one of the exceptions applies, petitioner is entitled to proceed IFP. Although the Court remains satisfied that Petitioner's claims in this case have been properly adjudicated, the Court declines to certify that the appeal is not taken in good faith. *See* 28 U.S.C. § 1915(a)(3); *cf. Kramer v. Kemna*, 21 F.3d 305, 307 (8th Cir. 1994) ("Good faith and lack of frivolousness, without more, do not serve as sufficient bases for issuance of a certificate under 28 U.S.C. § 2253."). Accordingly, the Court grants Petitioner's application for leave to proceed on appeal IFP.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Petitioner's request for a certificate of appealability [Docket No. 20] is DENIED.
2. Petitioner's application for leave to proceed on appeal in forma pauperis [Docket No. 19] is GRANTED.

Dated: October 21, 2010

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge